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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,272

04/15/2004

Lise King

KING-5 (CIP)

7915

25889

7590

05/15/2006

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,272	Applicant(s) KING, LISE	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-11, 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over of U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin.

Claims 1, 20, and 21, Baumsteiger teaches a collapsible pet stroller comprising:

a) a frame comprising; i) a bottom section (Baumsteiger teaches two possible bottom section Fig. 3 #28 and/or Fig. 7 #38), a plurality of rails comprising a first set of substantially vertical rear rails (Baumsteiger Fig. 7 #22) and a second set of substantially forward rails (Baumsteiger Fig. 3 #19 and 18) coupled to said bottom section at a front portion of the frame (Baumsteiger Fig. 1 and 3 at point #30) and coupled to said substantially vertical rails; a handle (Baumsteiger #16) disposed on said frame, iv) a plurality of wheels (Baumsteiger #34) rotatably secured to said frame; and enclosure (Baumsteiger #12),; and wherein the forward rails are angled so that when the portable collapsible enclosure is placed on the frame, the forward rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and

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enclosure are in use (Baumsteiger Fig. 1), but is silent on the structural configuration of the enclosure.

However, Zarola teaches an enclosure comprising; i) an enclosure frame forming a bottom section (Zarola #13 and #72) of said enclosure, an outer section (Zarola #14) of said enclosure, and a plurality of end sections (Zarola #20 and 22) of said enclosure, said enclosure frame comprising a plurality of semicircular hoop portions (Zarola Col. 3 line 41-43; #30 and 72) forming a rounded upper surface and a plurality of crossbars; ii) a flexible netting material (Zarola Col. 4 line 37) secured to said enclosure frame and covering at least approximately one half of a length of said outer section of said enclosure iv) at least one door (Zarola #23) releasably secured to at least one of said plurality of end sections of said enclosure; and a handle (Zarola #31 and 32) mounted to said enclosure for carrying said enclosure; at least one fabric cover (Zarola Col. 3 line 30-32; Fig. 2 teaches the fabric cover covering at least one half of the length and Zarola is adjustable so at times it inherently will be covering half of the length)

Baumsteiger teaches an animal enclosure and cart for ease of traveling with an animal and Zarola teaches an animal enclosure for traveling with an animal. It would have been obvious to one of ordinary skill in the art to modify the teachings of Baumsteiger with the teachings of Zarola at the time of the invention since the modification is merely the selection of a known alternate equivalent animal enclosure selected for the feature of being expandable when desired.

Baumsteiger as modified by Zarola is silent on a padded material covering the bottom section of said enclosure. However, Halpin teaches a semicircular traveling

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animal enclosure with a padding material covering the bottom (Halpin fig. 3 #53). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger as modified by Zarola with the teachings of Halpin at the time of the invention for the added soft comfort for the animal, or to incorporate a moisture absorbing material which can soak up sweat or urine.

Regarding Claims 2 and 3, Baumsteiger as modified by Zarola teaches a collapsible frame comprises a plurality of side rails (Baumsteiger #19 and 18) secured to said bottom section (Baumsteiger #28) and a plurality of rear rails (Baumsteiger #22) of tubing secured to said bottom section. Baumsteiger teaches being ruggedly built of tubular material (Baumsteiger Fig. 7 #18), but is silent on metal, however it would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger at the time of the invention since the modification is merely the selection of an old and notoriously well-known tubing material selected for intended use to meet certain manufacturing design cost parameters, to prevent the animal from chewing it, and for durability, i.e. selection of a known material for intended use [Leshin 125 USPQ 416].

Regarding Claim 5, Baumsteiger as modified teaches said flexible material is secured to said enclosure frame with adhesive, rivets or binding (Zarola Col. 4 line 33).

Regarding Claim 6, Baumsteiger as modified teaches netting material (Zarola Col. 4 line 37), but does not explicitly teach fish netting. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger as modified by Zarola at the time of the invention since the modification is merely the

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selection of a known form of netting selected as an engineering design choice to meet certain design parameters such as cost.

Regarding Claim 7, Baumsteiger s as modified teaches said netting material is secured to said enclosure frame by rope or string which is wrapped through a hole in said netting material and around said enclosure frame (Zarola Col. 4 line 33).

Regarding Claim 8, Baumsteiger as modified teaches a durable, water resistant material disposed on a portion of said outer section of said enclosure (Zarola Col. 3 line 44).

Regarding Claim 9, Baumsteiger as modified teaches the durable water resistant material covers one of the end section of the enclosure (Zarola Fig. 1 #16).

Regarding Claim 10, Baumsteiger as modified teaches a window cut in the end section that contains the water resistant material (Zarola Fig. 1 #35).

Regarding Claim 11, Baumsteiger as modified teach a pocket located in said end section containing the water resistant material (Zarola Col. 1 line 51).

Regarding Claim 13, Baumsteiger as modified inherently teaches that said durable water-resistant material disposed on a portion of said outer section of said enclosure covers approximately one half of the length of said enclosure (Zarola Fig. 1 #16 and #44 and since the enclosure can expand and contract to different sizes).

Regarding Claim 14, Baumsteiger as modified does not explicitly teach that each of said plurality of wheels is comprised of rubber. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger at the time of the invention since the modification is merely the selection of a known material

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for intended use. It is old and notoriously well-known to use rubber tires, e.g. automobiles etc, selected for its durability and traction.

Regarding Claim 15, Baumsteiger as modified does not explicitly teach that the wheels are removable. However, merely making something separable is an obvious modification for one of ordinary skill in the art and does not present a patentably distinct limitation. It would have been obvious to one of ordinary skill in the art to modify the teachings of Baumsteiger at the time of the invention for the advantage of efficient storage [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)] and maintenance and repair.

Regarding Claim 16, Baumsteiger as modified teaches the plurality of wheels comprises four wheels (Baumsteiger Fig. 7 #34).

Regarding Claim 17, Baumsteiger as modified teaches a brake to stop rotation of the wheels (Baumsteiger Fig. 1 the element sticking out of the back wheel).

Regarding Claim 18, Baumsteiger as modified teaches the enclosure frame is constructed from a strong weather-proof material selected from the group consisting of aluminum, steel and heavy plastic (Zarola Col. 3 line 50).

Regarding Claim 19, Baumsteiger as modified teaches the door is releasably secured to at least one of said plurality of end sections of said enclosure by a zipper (Zarola #23 and Col. 2 line 25).

Regarding Claim 22, Baumsteiger as modified teaches a window (Zarola #35). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger at the time of the invention since relocating a known element

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i.e. shifting the location of a known element to an alternate wall does not present a patentably distinct limitation modified for the advantage of providing increased ventilation or visibility.

Claims 1-3, 5-11, 13-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin as applied to claims 1-3, 5-11, 13-20, and 22 above, and further in view of U.S. Patent No. 6,584,937 to Ludolph.

Regarding Claims 1-3, 5-11, 13-20, and 22, Baumsteiger as modified by Zarola teaches an enclosure that is covered partly in fabric and partly in netting. For purpose of argument, it could also be viewed that Zarola does not explicitly teach that the fabric covers one half of the length of the enclosure. However, Ludolph teaches that it is well-known to provide half of a moving animal enclosure with a fabric and the other half with netting. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumstieger as modified by Zarola with the teachings of Ludolph at the time of the invention since the modification is merely the change in size (i.e. length) to provide adequate protection for different size animals from sun and rain (Ludolph Col. 3 line 60)

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola.

Regarding Claims 20 and 21, Leader teaches a pet stroller comprising (Leader Fig. 1): a frame comprising; a bottom section (Leader elements #6), a handle disposed on said frame (Leader #3), a plurality of wheels rotatably secured to said frame (Leader #10 and 8); and an enclosure comprising (Leader #2): at least one door releasably secured to at least one of said plurality of end sections of said enclosure (Leader #17); an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure; wherein the rails are angled (Leader Fig. 1 #12) up so that when the collapsible enclosure is placed on the frame, the rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and enclosure are in use

Leader teaches placing a removable enclosure on the tray and that the enclosure can be partly covered with a fabric or partly exposed for the viewing pleasure of the animal, but is silent on the enclosure frame comprising a plurality of semicircular hoop portions and a plurality of crossbars; a flexible netting material secured to the enclosure frame outer section of said enclosure; and a handle mounted to said enclosure for carrying said enclosure. However, an animal (Zarola Col. 3 line 41-43) a portable collapsible (Zarola Col. 1 line 5-13) enclosure comprising semicircular hoop portions and cross bars (Zarola #30 and 72); flexible netting (Zarola Col. 4 line 37) material substantially covering the outer section of the enclosure; at least one door (Zarola #23); and a handle (Zarola #31 and 32); a fabric cover covering approximately one half of the

length of the enclosure (Zarola Fig. 2 teaches the fabric cover covering at least one half of the length and Zarola is adjustable so at times it inherently will be covering half of the length), the fabric cover being coupled to at least two frame components (Zarola Fig. 2 #28 and 30). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader with the teachings of Zarola the time of the invention since the modification is merely the selection of an alternate pet traveling enclosure selected for its ability to expand and collapse.

Regarding Claim 22, Leader as modified teaches a window (Zarola #35). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader at the time of the invention since relocating a known element i.e. shifting the location of a known element to an alternate wall does not present a patentably distinct limitation modified for the advantage of providing increased ventilation or visibility.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola as applied to claims 20 and 21 above, and further in view of U.S. Patent No. 6,584,937 to Ludolph.

Regarding Claim 20, Leader as modified teaches providing a grid pattern (i.e. the bars of the cage which are similar to the grid pattern of netting just a different mesh size) to enable the animal to see but to prevent it from getting out of the enclosure. Leader also teaches covering a portion of the grid pattern with a fabric to provide the

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animal with some shelter (Leader #2). Leader as modified by Zarola teaches an arched enclosure that is covered partly in fabric and partly in netting. For purpose of argument, it could also be viewed that Leader as modified by Zarola does not explicitly teach that the fabric covers one half of the length of the enclosure. However, Ludolph teaches that it is well-known to provide half of a moving animal enclosure with a fabric and the other half with netting. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader and Zarola with the teachings of Ludolph at the time of the invention since the modification is merely the change in size (i.e. length) to provide adequate protection for different size animals from sun and rain (Ludolph Col. 3 line 60).

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5-11, 13-22 have been considered but are moot in view of the new ground(s) of rejection.

The declarations under 37 CFR 1.132 filed 21 February 2006 are insufficient to overcome the rejection of claims 1-3, 5-11, 13-22 based upon U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin and U.S. Patent No. 6,584,937 to Ludolph or Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 6,584,937 to Ludolph as set forth in the last Office action because: they state that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art

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who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. See MPEP § 716.04.

Applicant has not provided required "objective" evidence necessary that an art recognized problem existed in the art for a long period of time without solution.

Applicant has not clearly established that the commercial success is not attributed to the result of heavy promotion or advertising. The inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate nexus.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Examiner maintains that Zarola teaches that the netting material covers at least approximately one half of a section of the enclosure (Zarola Col. 4 line 36-37). Zarola clearly teaches that the portion of Zarola as identified as element #12 is a pliable mesh material. According to Zarola Fig. 1 the length of extended section 12 is greater than the length of section 10. Therefore, section 12 is a mesh material that is extending at least approximately half of a section of the enclosure.

Examiner maintains that Zarola teaches that the fabric cover covers approximately one half of the length of the enclosure (Zarola Col. 2 line 1-7) teaches that section 10 is covered by a fabric i.e. canvas. Section 10 and section 12 together make up the enclosure and section 10 is approximately one half of the length. Furthermore, Examiner maintains that one of ordinary skill in the art would look to the teachings of Ludolph with an expectation of success. Ludolph was cited merely to

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teach that it is general knowledge of one of ordinary skill in the art that when providing an animal enclosure to provide equal amounts of cover space and netting space to provide the proper pleasure and comfort for the animal while protecting the animal from exposure to sun and rain.

The following paragraphs are a reiteration of the comments provided by the examiner in the last office action. Applicant has not claimed the pet or that the pet is located inside the enclosure when the enclosure is located on the frame. Since this has not been claimed the claim language could read on any luggage cart or stroller or hand-cart with a collapsed enclosure or any bag that has netting on it or any piece of luggage with netting. Zarola teaches transporting animals in the enclosure (Zarola Col. 3 line 41-43), but since applicant doesn't claim the animal one of ordinary skill in the art could transport the enclosure of Zarola when Zarola is in a collapsed state on almost any cart and still meet the limitations of the claims. Also, pet stroller does not clearly mean that the pet is riding in the stroller. The Pet could be pushing the stroller or pulling the stroller or the stroller could be for carrying items that belong to the pet.

Leader was cited merely to teach that it is old and notoriously well-known to carry pet enclosure on wheeled carts/strollers to prevent the owner from getting tired by having to carry the animal or the enclosure and depending on the size of the pet the owner might not be able to carry the pet (Leader Col. 1 line 24-25). Leader was cited merely to teach that it is known to place a pet enclosure covered in fabric onto a stroller and the structural components of the stroller. Leader was modified by Zarola since

Zarola merely teaches a structurally different pet enclosure. One of ordinary skill in the art would be motivated to modify the teachings of Leader with the teachings of Zarola since the modification is merely the selection of an alternate equivalent enclosure performing the same intended function.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art. The examiner would also like to point out the structural features of the enclosure taught by U.S. Patent No. 5,277,148 not currently used in the rejection, but teaches many of the structural limitations of the enclosure presented in the independent claims (e.g. Fig. 4, 8, 9).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,074,734.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

09 May 2006